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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/088,163	06/01/1998	JOHN R. MOSER, JR	960514.ORI	1414

7590 01/27/2003

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 01/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Communication R : Appeal**

Application N .

09/088,163

Applicant(s)

MOSER, JR, JOHN R.

Examiner

Edward A. Miller

Art Unit

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☐ The Notice of Appeal filed on \_\_\_\_\_ is not acceptable because:

- (a) ☐ it was not timely filed.
- (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 1.17(b).
- (c) ☐ the appeal fee received on \_\_\_\_\_ was not timely filed.
- (d) ☐ the submitted fee of \$\_\_\_\_\_ is insufficient. The appeal fee required by 37 CFR 1.17(b) is \$\_\_\_\_\_.
- (e) ☐ the appeal is not in compliance with 37 CFR 1.191 in that there is no record of a second or a final rejection in this application.
- (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on \_\_\_\_\_.

2. ☒ The appeal brief filed on 01 November 2002 is NOT acceptable for the reason(s) indicated below:

- (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 1.192.
- (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 1.17(c).
- (c) ☐ the submitted brief fee of \$\_\_\_\_\_ is insufficient. The brief fee required by 37 CFR 1.17(c) is \$\_\_\_\_\_.

The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. Extensions of time may be obtained under 37 CFR 1.136(a).

*See next page.*

3. ☐ The appeal in this application is DISMISSED because:

- (a) ☐ the statutory fee for filing the brief as required under 37 CFR 1.17(c) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.
- (b) ☐ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.
- (c) ☐ Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on \_\_\_\_\_.
- (d) ☐ other: \_\_\_\_\_

4. ☐ Because of the dismissal of the appeal, this application:

- (a) ☐ is abandoned because there are no allowed claims.
- (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
- (c) ☐ is before the examiner for consideration of the submission and prosecution has been reopened pursuant to 37 CFR 1.114.

EDWARD A. MILLER  
PRIMARY EXAMINER

Art Unit: 3641

1. The Appeal Brief filed on November 1, 2002, is not fully responsive to the prior Office Action because of the following omission(s) or matter(s):

The Appeal Brief contains, within the body thereof, an amendment after Appeal. This is not in accordance with 37 CFR 1.192(c). Further, note 37 CFR 1.4(c):

(c) Since different matters may be considered by different branches or sections of the United States Patent and Trademark Office, each distinct subject, inquiry or order must be contained in a separate paper to avoid confusion and delay in answering papers dealing with different subjects.

In accordance with Rule 4(c), to incorporate an amendment after appeal within the Appeal Brief is clearly improper. Such amendments, under 37 CFR 1.116, are acted upon by the Examiner and not the Board of Appeals and Interferences. The Appeal Brief, in contrast, is decided by the Board of Appeals and Interferences, and not the Examiner. An amendment after appeal under 37 CFR 1.116 may be refused entry. The instant Brief is clearly a combination of two separate papers in one, each undertaking being subject to different procedures and different jurisdiction within the USPTO. Thus, the Brief is clearly an improper submission to the USPTO, and thus non-responsive.

2. See 37 CFR 1.111. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment.


EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

3. Any inquiry concerning either this or an earlier communication from the Examiner should be directed to Examiner Edward A. Miller at (703) 306-4163. Examiner Miller may normally be reached Monday-Thursday, from 10 AM to 7 PM.

If attempts to reach Examiner Miller by telephone are unsuccessful, his supervisor Mr. Carone can be reached at (703) 306-4198. The Group fax number is (703) 305-7687.

If there is no answer, or for any inquiry of a general nature or relating to the application status, please call the Group receptionist at (703) 308-1113.

Miller/em  
January 23, 2003

  
EDWARD A. MILLER  
PRIMARY EXAMINER